

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

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**IN RE GENETICALLY MODIFIED RICE  
LITIGATION**

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) **4:06 MD 1811 CDP**  
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) **ALL CASES**  
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**PLAINTIFFS' LEAD COUNSEL'S AND PLAINTIFFS' EXECUTIVE  
COMMITTEE'S MOTION TO ESTABLISH A COMMON BENEFIT FUND**

Plaintiffs' Court-appointed Lead Counsel ("Lead Counsel") and Plaintiffs' Executive Committee, on behalf of themselves and other plaintiffs' counsel who, at the direction, request, and supervision of Lead Counsel, actively have assisted in prosecuting this centralized multidistrict litigation (the "Leadership Group"), respectfully move this Court, upon (a) the accompanying Declaration of Adam J. Levitt, dated August 19, 2009, together with the exhibits appended thereto ("Levitt Declaration"); and (b) the accompanying Memorandum of Law, dated August 19, 2009, for the Court, pursuant to its inherent powers to enter an Order:

(i) establishing a common benefit fund to compensate attorneys for services rendered for the plaintiffs' common benefit and to reimburse them for expenses incurred in conjunction with those common benefit services;

(ii) directing defendants to hold back and set aside (a) 8% of any gross recovery obtained by producer plaintiffs, by way of judgment, settlement, or otherwise, in each

genetically-modified rice-related action for attorneys' fees<sup>1</sup>; (b) 7% of any gross recovery obtained by non-producer plaintiffs, by way of judgment, settlement, or otherwise, in each genetically-modified rice-related action for attorneys' fees; and (c) an additional 3% of any gross recovery obtained by any plaintiff, by way of judgment, settlement, or otherwise, in each genetically-modified rice-related action for common benefit costs and expenses incurred by the Leadership Group herein; and

(iii) directing defendants to place the held-back and set-aside amounts into a "common benefit trust fund" established and maintained by Lead Counsel.

The reasons supporting the instant Motion are set forth in the accompanying Levitt Declaration and memorandum of law, filed contemporaneously herewith. A proposed Order granting the relief sought is annexed to the Levitt Declaration as Exhibit K.

**WHEREFORE**, Plaintiffs' Lead Counsel and Plaintiffs' Executive Committee respectfully request that the Court grant the relief requested above.

**Dated:** August 19, 2009

Respectfully submitted,

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLC**

By: /s/ Adam J. Levitt

Adam J. Levitt

Stacey T. Kelly

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<sup>1</sup> For purposes of this motion, "action" includes those cases that have been or will be (a) part of this multidistrict litigation; (b) pending in a state court where a plaintiff's counsel includes at least one attorney who also serves as counsel for one or more plaintiffs, producer or non-producer, in an action that is, has been, or will be part of this MDL; and/or (c) includes any claim resolved that benefitted from plaintiffs' common benefit efforts.

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*Plaintiffs' Executive Committee*

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that I have this 19th day of August 2009, electronically filed a copy of the foregoing with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the parties of record.

/s/ Adam J. Levitt